IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

OP.No. 16571 of 1997(S)

AGAINST ORDER IN RA NO.14/1997 IN GTA 43/1990 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

PETITIONER:

THE COMMISSIONER OF GIFT-TAX,
TRIVANDRUM-

BY STANDING COUNSEL, GOVT. OF INDIA (TAXES)
ADV. SRI.P.K.RAVINDRANATHA MENON (SR.) &
SRI.GEORGE K.GEORGE

RESPONDENT:

SHRI.C.T.JOSEPH,
M/S.C.T.THOMAS, CHANGANACHERRY.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.16571 of 1997

Dated, this the 25th day of July, 2007

JUDGMENT

H.L.Dattu, C.J.

This is a petition filed by the Revenue under Section 26(3) of the Gift Tax Act, 1958 ('Act' for short).

(2) The Revenue being aggrieved by the orders passed by the Deputy commissioner of Gift Tax (Appeals) Thiruvananthapuram, had filed second appeal before the Income Tax Appellate Tribunal, Cochin Bench, Cochin in G.T.A.No.43 of 1990 for the assessment year 1984-85.

(3) The Tribunal has rejected the Revenue's appeal by its order dated 18th October, 1996.

(4) The Revenue had filed a petition under Section 26(1) of the Act, inter alia, requesting the Tribunal to refer the following questions of law for our consideration and decision:

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and in fact in holding that the Deputy Commissioner of Incometax (Appeals) is not justified in sustaining the assessment on the view that there was transfer of the assessee's share in the goodwill of the firm in favour of the incoming partner?
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> 2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding that the gift-tax assessment in this case cannot be sustained?"

(5) The Tribunal has rejected the petition filed by the Revenue. Therefore, the Revenue is before us in this petition filed under Section 26(3) of the Act requesting us to direct the Tribunal to refer the questions of law raised by it for our consideration and decision.

(6) The questions of law raised by the Revenue in this petition filed under Section 26(3) of the Act are no more debatable in view of the law declared by the apex Court in the case of *Commissioner of Gift Tax* v. *T.M.Louiz* [(2000) 245 ITR 831]. Since the questions of law raised by the Revenue have already been decided by the apex Court, at this stage, we need not to have directed the Tribunal to state the case and refer the questions of law for our consideration and decision. Therefore, the petition requires to be rejected and it is rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns